

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

SAUL ZAPATA)	
Claimant)	
VS.)	
)	Docket Nos. 168,210; 168,211;
)	& 177,505
IBP, INC.)	
Respondent)	
Self-Insured)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

Claimant appealed Administrative Law Judge Jon L. Frobish's Award entered on April 21, 1998. The Appeals Board heard oral argument by telephone conference on December 21, 1998. Stacy Parkinson was appointed Appeals Board Member Pro Tem to serve in place of Appeals Board Member Gary M. Korte who recused himself from this proceeding.

APPEARANCES

Claimant appeared by his attorney, Diane F. Barger of Wichita, Kansas. Respondent, a qualified self-insured, appeared by their attorney, Gregory D. Worth of Lenexa, Kansas . The Kansas Workers Compensation Fund (Fund) appeared by their attorney, Michael C. Helbert of Emporia, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and has adopted the stipulations listed in the Award.

ISSUES

This case originally involved three separate docketed claims: 168,210; 168,211; and 177,505. The claim in Docket No. 168,210 for an alleged injury to claimant's shoulders beginning in January 1992 was withdrawn by the claimant. This docketed claim was not appealed and will not be addressed by the Appeals Board.

Docket No. 168,211 alleges an injury to claimant's low back that occurred on May 30, 1992, while working for the respondent. The Administrative Law Judge denied claimant workers compensation benefits, finding claimant failed to sustain his burden of proving he suffered a back injury and further failed to prove that the back injury occurred while he was working for the respondent. The Administrative Law Judge concluded that claimant's testimony was not credible and the record was replete with inconsistencies. Claimant, on the other hand, contends he presented credible evidence through his testimony and the testimony of both treating and evaluating physicians that his back injury occurred while working for the respondent.

The second claim is for bilateral shoulder injuries that claimant alleges occurred while performing work activities for the respondent from March 1993 through May 1993. This claim was assigned Docket No. 177,505. The Administrative Law Judge also denied claimant workers compensation benefits for the bilateral shoulder injury claim, finding claimant failed to prove he suffered an aggravation to a pre-existing bilateral upper extremity condition.

Conversely, claimant contends he is not seeking workers compensation benefits for an aggravation to a pre-existing upper extremity condition. But he is seeking benefits for new injuries to both shoulders and upper back for a separate date of accident from March 1993 through May 1993.

At oral argument, the Appeals Board requested the parties' agreement that, if these claims were found compensable, the Appeals Board should decide the remaining outstanding issues. The respondent, however, would not agree without giving the Administrative Law Judge the first opportunity to make findings in regard to those issues. Accordingly, if these claims are determined to be compensable, the matter will be remanded to the Administrative Law Judge for findings on the remaining issues.

FINDINGS OF FACT

After reviewing the record, considering the briefs, and hearing the arguments of the parties, the Appeals Board finds as follows:

- (1) At the time of the regular hearing in 1996, claimant was 31 years of age. He had started working for the respondent on August 15, 1988.
- (2) Claimant was originally from Mexico and immigrated to this country in either 1980 or 1981. Claimant's education consisted of completing the fifth grade in Mexico.
- (3) Claimant testified he injured his low back at work on May 30, 1992. He was working taking fat and meat off a conveyor belt when the belt started slipping and became stuck. Claimant took a meat hook and pulled hard on the belt in an effort to unstuck the belt. As claimant pulled, the wooden handle of the meat hook separated causing claimant to fall backwards. Claimant caught himself and immediately felt pain all through his lower back.
- (4) Claimant notified his supervisor, who took him to the plant dispensary to see the company nurse. Claimant received Tylenol and ice therapy at the dispensary.
- (5) Claimant returned to the dispensary two or three other times for the discomfort in his low back. But respondent never referred claimant for medical treatment.
- (6) Claimant testified he was afraid to go to the dispensary because he and the company nurse had a problem over the treatment of his pregnant wife when she fell at work.
- (7) On December 1, 1992, because of continuing discomfort in his low back, claimant went on his own for treatment to chiropractor Patrick E. Murray in Emporia, Kansas. Dr. Murray had claimant placed on light duty for three days and treated claimant a total of eleven times between December 1, 1992, and June 1, 1993.
- (8) Claimant obtained authorized medical treatment for his low back injury as a result of a preliminary hearing held on December 9, 1992. At that time, the Administrative Law Judge appointed orthopedic surgeon Dale E. Darnell, M.D., of Kansas City, Missouri, to treat claimant's low-back problem.
- (9) Dr. Darnell saw claimant on January 21, 1993. Dr. Darnell did not testify in this matter and his medical records were not made part of the record. The claimant, however, testified that Dr. Darnell placed him in a physical therapy program and gave him exercises for his low-back injury.

(10) Lowry Jones, Jr., M.D., an orthopedic surgeon, also saw claimant for both his bilateral shoulder problems and his low-back problem. Dr. Jones testified by deposition on April 9, 1996.

(11) Dr. Jones saw claimant for the first time on July 19, 1993, and diagnosed claimant with a lumbosacral sprain. In December of 1993, Dr. Jones had claimant undergo an MRI examination which revealed degenerative disc disease at the L4-5 and L5-S1 levels with disc dessication and mild disc bulging.

(12) Dr. Jones opined that work activities involving repetitive bending and lifting would have aggravated claimant's degenerative disc disease. The doctor did not express an opinion on claimant's permanent functional impairment. But he did restrict claimant's work activities as the result of a combination of his low-back injury, bilateral shoulder injuries, and his nonwork-related Raynaud's phenomenon.

(13) At claimant attorney's request, claimant was examined and evaluated by Aly M. Mohsen, M.D., a physical medicine physician, on October 21, 1993. Dr. Mohsen found claimant to have superimposed myofascial pain syndrome involving the scapulocostal and lumbar areas of the spine. Based on the AMA Guides to the Evaluation of Permanent Impairment, Third Edition (Revised), he assigned an 8 percent whole body impairment for claimant's back condition. After Dr. Mohsen was given a description of claimant's May 30, 1992, accident, he opined claimant's low-back condition was causally related to that accident. The doctor imposed permanent work restrictions also for the combination of claimant's low-back injury, bilateral shoulder injuries, and nonwork-related Raynaud's phenomenon.

(14) Respondent had claimant examined and evaluated on September 8, 1994, by Phillip R. Mills, M.D., a physical medicine and rehabilitation physician. Dr. Mills found claimant to have complaints in the right back and right thigh areas. The doctor found claimant had sustained a low-back strain at work on May 30, 1992. Utilizing the AMA Guides to the Evaluation of Permanent Impairment, Third Edition (Revised), he assessed claimant with a 1 percent whole body permanent functional impairment for the low-back injury.

(15) The Administrative Law Judge appointed Preston Brent Koprivica, M.D., board certified as an independent medical examiner, to provide an independent medical examination of claimant. Dr. Koprivica examined claimant on October 2, 1995. Before the examination, the doctor had been provided with claimant's extensive medical treatment records and reports of treating and evaluating physicians.

Dr. Koprivica found claimant to have ongoing low-back pain that limited his ability to lift, bend, push, pull, or twist. He attributed the low-back pain to claimant's May 30,

1992, work-related accident. The doctor's diagnosis was chronic lumbar strain with identified degenerative disc disease that was asymptomatic before the May 30, 1992, accident.

In accordance with the AMA Guides to Evaluation of Permanent Impairment, Third Edition (Revised), Dr. Koprivica assessed claimant with an 8 percent whole body functional impairment related to the low-back injury. He assigned permanent work restrictions specifically for the low back as follows: 1. occasional lifting limited to 40 to 50 pounds; 2. frequent lifting limited to 20 pounds or less; 3. avoid repetitive bending, pushing, pulling, twisting, or lifting activities; and 4. avoid sustained or awkward postures.

(16) Claimant testified at the continuation of the regular hearing on May 29, 1996, that his back was symptomatic all the time. He would have more pain and discomfort at times when he had to carry or lift something heavy.

(17) Spanish is claimant's native language. Although claimant's attorney utilized an interpreter at all times when claimant testified in these proceedings, the respondent admitted into evidence a video tape that demonstrated claimant had acquired a limited ability to understand and speak the English language.

CONCLUSIONS OF LAW

(1) The claimant in a workers compensation proceeding has the burden to establish his or her right to an award of compensation by proving the conditions on which the right depends. K.S.A. 1991 Supp. 44-501(a); Chapman v. Beach Aircraft Corp., 258 Kan. 653, 655, 907 P.2d 828 (1995).

(2) Based on the whole record, the claimant has the burden to persuade the trier of fact by a preponderance of the credible evidence that his or her position is more probably true than not true. K.S.A. 1991 Supp. 44-508(g); Hughes v. Inland Container Corp., 247 Kan. 407, 410, 799 P.2d 1011 (1990).

(3) The Administrative Law Judge denied claimant's claim for a work-related May 30, 1992, low-back injury. The Administrative Law Judge found claimant's testimony not credible, replete with inconsistencies, and his allegations lacked supporting evidence.

(4) The Appeals Board disagrees with the Administrative Law Judge's conclusion. The Appeals Board concludes claimant was consistent at the various times in the record when he described the May 30, 1992, work-related accident. Further, claimant was consistent in his description of the accident in the history he related to Dr. Jones, Dr. Mills, Dr.

Mohsen, and Dr. Koprivica. Dr. Jones provided treatment and Drs. Mohsen, Mills, and Koprivica all examined and evaluated claimant for the low-back injury. Although some of those physicians had a different diagnosis for the particular low-back injury, they all attributed claimant's low-back injury to the May 30, 1992, work-related accident.

(5) The respondent and the Fund both vigorously argue that claimant is not credible because an interpreter was utilized at all times when he testified in these proceedings. They contend the claimant was capable of understanding and speaking English and there was no need for an interpreter. They argue that claimant's use of an interpreter was merely a tactic on his part to increase his recovery of workers compensation benefits.

(6) The Appeals Board concludes the record as a whole establishes that claimant has a limited ability to speak and understand the English language. But the record does not prove claimant was somehow attempting to manipulate the workers compensation system by utilizing an interpreter when he was required to testify. In fact, claimant never testified he could not speak or understand English. The only comments the Appeals Board was able to find in this voluminous record on claimant's ability to speak and understand English were the comments of claimant's attorney. She argued claimant needed an interpreter because he did not have a sufficient understanding of the English language. Claimant's attorney acknowledged it was her idea and requirement to provide claimant with an interpreter, when he was required to testify in these proceedings, to make sure claimant understood the questions asked and so he could give complete answers.

(7) The Appeals Board concludes that claimant has proven by a preponderance of the credible evidence that he suffered a low-back injury while working for the respondent on May 30, 1992.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Jon L. Frobish's Award entered on April 21, 1998, in Docket No. 168,211, should be, and is hereby reversed and remanded to the Administrative Law Judge for a decision on the remaining outstanding issues of notice and prejudice, average weekly wage, and nature and extent of claimant's disability. The Appeals Board does not retain jurisdiction over this case.

IT IS SO ORDERED.

DOCKET No. 177,505

FINDINGS OF FACT

(1) Claimant settled a claim for workers compensation benefits with the respondent in a settlement hearing held before Administrative Law Judge Floyd V. Palmer on March 27, 1992.

(2) Claimant settled the claim for injuries to his hands, wrists, forearms, upper arms, shoulders, and any other injuries to any parts of his body through March 27, 1992, the date of the settlement hearing. This was a compromise settlement based in part, upon the functional impairment ratings assessed by Sergio Delgado, M.D., John J. Wertzberger, M.D., and James P. Hopkins, M.D. The amount of the settlement was \$15,000. The stipulated date of accident was November 1989.

(3) Drs. Delgado, Wertzberger, and Hopkins all testified in this matter. Dr. Delgado treated the claimant in 1990 and 1991 for bilateral carpal tunnel syndrome. Dr. Hopkins examined and evaluated claimant on November 6, 1990, and Dr. Wertzberger saw claimant on January 2, 1992. All three physicians rated claimant's permanent functional impairment for only bilateral carpal tunnel syndrome. Further, all three physicians placed permanent work restrictions on claimant for only the bilateral carpal tunnel syndrome condition. Both Dr. Delgado and Dr. Wertzberger restricted claimant from repetitive hand and wrist activities. While Dr. Hopkins also restricted claimant from performing repetitive activities, he additionally placed lifting restrictions of 15 pounds for the left upper extremity and 10 pounds for the right upper extremity.

Dr. Wertzberger found claimant had some right shoulder complaints. Because of this, he restricted claimant to limited overhead work and repetitive pushing and pulling at 90 degrees of flexion to minimize the possibility of causing significant right shoulder pathology. But Dr. Wertzberger testified no permanent impairment was assessed for the right shoulder complaints.

(4) The claim that is the subject of this appeal and assigned Docket No. 177,505 was filed on June 2, 1993, and alleges injuries to claimant's shoulders and upper back. Claimant contends those injuries occurred while he was performing regular work activities for the respondent from March 1993 through May 1993.

(5) Claimant testified that during this period of accident he was performing a job identified as cleaning chains for the respondent. The cleaning chains job required him to remove bones from a hook attached to a moving chain located above claimant's head. Claimant was responsible for handling an average of 370 hooks of bones per hour. Claimant had to reach over his head with both hands. He opened the hook with one hand and removed the bones with the other hand. Contaminated bones were cleaned with a

saw located in front of the claimant and then the contamination was discarded into a bucket. The clean bones were then placed on a conveyer belt. This particular job required claimant to repetitively use his hands and arms at a fast pace.

(6) While performing the cleaning chains job, claimant started having pain and discomfort in both of his shoulders. He notified his foreman, and he was treated one time at the dispensary and then referred to orthopedic surgeon Lowry Jones, Jr., M.D., in Kansas City, Missouri.

(7) The first time claimant saw Dr. Jones was July 19, 1993. Claimant complained of pain in both shoulders, more on the right than the left. Also claimant complained that the cold environment caused discomfort in his hands.

Dr. Jones ordered an EMG examination that showed mild left and right carpal tunnel syndrome. The doctor also diagnosed claimant with thoracic outlet syndrome and Raynaud's phenomenon. Dr. Jones testified that Raynaud's phenomenon was not caused by claimant's work. But working in cold wet environments caused the underlying condition to be symptomatic. The symptoms were temporary and not permanent because once a person was not in the cold and wet environment the symptoms would subside.

(8) Claimant's thoracic outlet syndrome condition was not caused by a single traumatic event. Thoracic outlet syndrome is usually from repetitive overuse, muscular tension, and poor posturing. Dr. Jones opined that the cleaning chains job required the type of repetitive work activities that caused thoracic outlet syndrome. Claimant's symptoms involved pain in the upper back, shoulders, along with numbness in his arms, hands, and fingers, all consistent with thoracic outlet syndrome symptoms. The pathologic problem was at the shoulder level. Dr. Jones did not believe claimant's bilateral carpal tunnel syndrome condition was a significant factor in regard to claimant's work activities in 1993.

Dr. Jones restricted claimant, because of his Raynaud's phenomenon condition, to work in an environment that would minimize cold temperatures and he was not to directly handle wet meat. Restrictions associated with his thoracic outlet syndrome condition limited lifting to 20 to 34 pounds occasionally and 11 to 19 pounds frequently. Additional restrictions were to limit gripping, pushing, and reaching above shoulder level to an occasional basis.

(9) The last time Dr. Jones saw claimant was September 20, 1993, when he released claimant to return to work with permanent restrictions. In a follow-up letter to claimant's attorney dated November 17, 1993, Dr. Jones opined that with claimant's work-related injuries and also his underlying Raynaud's systemic disease, claimant may not be able to continue to work for the respondent. In another letter to respondent's attorney dated

October 24, 1994, Dr. Jones had reviewed medical reports sent by respondent's attorney from Dr. Mills, a Functional Capacity Evaluation, and a video tape of a job requiring claimant to cut with a knife and to use hooks. Dr. Jones felt that claimant could do this job but it would significantly aggravate his upper extremity thoracic outlet syndrome condition.

(10) Aly M. Mohsen, M.D., examined and evaluated claimant on October 21, 1993, at claimant attorney's request. In regard to claimant's bilateral shoulder and upper back complaints, he diagnosed claimant with bilateral bicipital, supraspinatus, and rotator cuff tendonitis and bursitis. He also found bilateral shoulder instability. The doctor attributed those problems to claimant's work activities. Dr. Mohsen rated claimant with a 14 percent permanent impairment for each upper extremity and testified that 7 percent of the 14 percent was related to claimant's carpal tunnel syndrome with the other 7 percent related to his shoulder injuries. The doctor's permanent restrictions involved claimant's upper extremities which included both claimant's bilateral carpal tunnel syndrome injuries and his bilateral shoulder and upper back injuries.

Additionally, Dr. Mohsen had not been provided with the medical treatment records and reports of Drs. Delgado, Wertzberger, and Dr. Hopkins in regard to claimant's pre-existing bilateral carpal tunnel syndrome.

(11) At respondent's request, Phillip R. Mills, M.D., examined and evaluated claimant on September 8, 1994. Dr. Mills found claimant to have bilateral shoulder and upper back complaints. He diagnosed claimant with overuse syndrome in both shoulders. In accordance with the AMA Guides to Evaluation of Permanent Impairment, Third Edition (Revised), Dr. Mills opined that claimant had a 4 percent permanent functional impairment of the upper extremities for each shoulder injury. The doctor gave a separate 5 percent rating for each wrist for the carpal tunnel syndrome condition. Working above shoulder level was not recommended. The doctor advised claimant that he could reach up to shoulder level intermittently but not repetitively or on a prolonged basis.

Dr. Mills opined that the cleaning chains job, that required claimant repetitively to work with his hands and also work above shoulder level more than one third of the time per day, would be outside of those restrictions. The doctor also testified his diagnosis of bilateral shoulder overuse syndrome was not referred pain from claimant's bilateral carpal tunnel syndrome condition.

Respondent had not provided, for Dr. Mills' review, the previous medical records and reports concerning claimant's carpal tunnel syndrome condition from Drs. Delgado, Wertzberger, and Hopkins.

(12) Preston Brent Koprivica, M.D., performed an independent medical examination of claimant on October 2, 1995. His examination involved claimant's bilateral shoulder and upper back complaints. Dr. Koprivica found claimant to have mild myofascial pain in the parascapular and parathoracic regions with no evidence of significant rotator cuff pathology or cervical radiculopathy. He attributed claimant's bilateral shoulder and upper back injuries to claimant's work for respondent.

The doctor rated claimant with a 5 percent whole body functional impairment based on the AMA Guides for Evaluation of Functional Impairment, Third Edition (Revised). Specifically, Dr. Koprivica referred to Table 53 at page 80 of the AMA Guides, where, as in this case, permanent impairment can be assigned to a documented injury with medically documented pain for six months duration. For the myofascial pain condition, Dr. Koprivica imposed permanent restrictions limiting claimant's ability to do repetitive work overhead and repetitive pushing and pulling at the shoulder level.

Dr. Koprivica was provided with medical records and reports of Drs. Delgado, Wertzberger, and Hopkins concerning claimant's pre-existing carpal tunnel syndrome injuries. Dr. Koprivica found no evidence of any additional permanent aggravating injuries to claimant's pre-existing carpal tunnel syndrome condition. The doctor opined that claimant still had mild bilateral carpal tunnel syndrome with no additional permanent function impairment. The 5 percent impairment that he assessed was the result of the May 1993 cumulative trauma injury to claimant's bilateral shoulders and neck. No additional impairment was assigned to claimant's upper extremities because Dr. Koprivica believed significant impairment had already been assigned. Claimant's pre-existing bilateral carpal tunnel syndrome had not been materially increased by any additional employment activities. Previous work restrictions outlined in Drs. Delgado's, Wertzberger's, and Hopkins' reports were not materially increased by the additional aggravating injuries.

Dr. Koprivica was given a description of the cleaning chains job claimant performed in 1993 and also a description of the last job claimant performed from January 1995 until he was terminated on May 10, 1995. The doctor testified both of those jobs required claimant to repetitively use his upper extremities and were outside his permanent work restrictions.

(13) Claimant testified at the continuation of the regular hearing on May 29, 1996, that the respondent took him off work for almost a year in 1994 because no job was available within his permanent restrictions. Finally, on January 23, 1995, respondent returned claimant to work to a job that again required him to perform repetitive activities with his hands.

(14) As a result, claimant's shoulders again became symptomatic and he reported the complaints to his supervisors. On May 10, 1995, claimant was terminated because he was unable to perform his work because of his continuing shoulder complaints.

CONCLUSIONS OF LAW

(1) The claimant in a workers compensation proceeding has the burden to establish his or her right to an award of compensation by proving the conditions on which the right depends. K.S.A. 1992 Supp. 44-501(a); Chapman v. Beach Aircraft Corp., 258 Kan. 653, 655, 907 P.2d 828 (1995).

(2) Based on the whole record, the claimant has the burden to persuade the trier of fact by a preponderance of the credible evidence that his or her position is more probably true than not true. K.S.A. 1992 Supp. 44-508(g); Hughes v. Inland Container Corp., 247 Kan. 407, 410 799 P.2d 1011 (1990).

(3) The Administrative Law Judge denied claimant's claim for work-related bilateral shoulder and neck injuries that claimant alleged occurred as a result of his repetitive work activities during March 1993 through May 1993. The Administrative Law Judge found claimant, on March 27, 1992, had settled with respondent for upper extremity injuries with a November 1989 accident date. He found the settlement for 16.67 percent permanent partial disability was based on a compromise of functional impairment ratings by Drs. Delgado, Wertzberger, and Hopkins. The Administrative Law Judge found there had to be at least a 3 percent increase in functional impairment before there could be an aggravation of a pre-existing condition. He went on to conclude that claimant failed to prove a permanent aggravation to his pre-existing upper extremity injuries that exceeded 3 percent.

(4) The Appeals Board disagrees with the Administrative Law Judge's conclusion. The Appeals Board finds claimant's testimony coupled with Dr. Koprivica's medical opinions prove that claimant's work activities performed in March 1993 through May 1993 caused permanent injury to claimant's shoulders and neck.

(5) The Appeals Board finds Dr. Koprivica's medical opinions are the most persuasive and should be given the most weight in determining the causal relationship between claimant's injuries and his work. First, Dr. Koprivica was an independent medical examiner appointed by the Administrative Law Judge. Second, he was the only physician who had an opportunity to examine the claimant after he had reviewed the medical records and reports of Drs. Delgado, Wertzberger, and Hopkins concerning claimant's pre-existing bilateral carpal tunnel syndrome condition. Lastly, Dr. Koprivica had the opportunity to

examine claimant after he had returned to work and after respondent had terminated claimant because he could not perform the work within his permanent work restrictions.

(6) The Appeals Board concludes claimant's testimony proves the jobs respondent returned claimant to after he was released from treatment for his carpal tunnel syndrome injuries in 1991 were all outside Dr. Delgado's restriction to avoid repetitive activities with his hands and wrist. Furthermore, the jobs respondent returned claimant to after Dr. Jones treated claimant in 1993 and then in 1995 violated Dr. Jones' permanent restriction of occasional gripping, pulling, and reaching above shoulder level.

(7) Thus, the Appeals Board concludes that these repetitive work activities caused claimant to sustain a separate and distinct injury to both shoulders and neck not associated with his pre-existing carpal tunnel syndrome condition. Dr. Koprivica assessed claimant with a 5 percent whole body functional impairment for myofascial pain as a result of a cumulative injuries to those regions. The 5 percent functional impairment imposed by Dr. Koprivica was in addition to claimant's pre-existing bilateral carpal tunnel syndrome functional impairment.

(8) Dr. Jones, Mohsen, Mills, and Koprivica all diagnosed claimant with Raynaud's phenomenon. No permanent functional impairment was assessed. But claimant was restricted to work environments that would minimize his exposure to cold and wetness.

The Appeals Board concludes the greater weight of the medical evidence established that Raynaud's phenomenon was not caused by the work environment while he was employed by the respondent. But the symptoms were exacerbated when claimant worked in the cold and wet work environment. Accordingly, those restrictions relating the Raynaud's phenomenon are not related to claimant's work. Exposures to a cold and wet work environment only produced a temporary increase of symptoms and not a permanent aggravation of the underlying condition. See West-Mills v. Dillion Companies, Inc., 18 Kan. App.2d 561, 859 P.2d 382 (1993).

(9) The Appeals Board, therefore, concludes that claimant's repetitive work activities while employed by the respondent from March 1993 through May 1993 caused claimant to suffer neck and bilateral shoulder injuries.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Jon L. Frobish's Award entered on April 21, 1998, in Docket No. 177,505, should be, and is hereby reversed and remanded to the Administrative Law Judge for decision on the remaining outstanding issues of notice and prejudice, average

weekly wage, nature and extent of claimant's disability, K.S.A. 44-510a (Ensley) credit, and Fund liability. The Appeals Board does not retain jurisdiction over this case.

IT IS SO ORDERED.

Dated this ____ day of April 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Diane F. Barger, Wichita, KS
Gregory D. Worth, Lenexa, KS
Michael C. Helbert, Emporia, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director